

CONCERNING

The Duty of Excise on Brandy.

First, That *Brandy* is within the letter and meaning of the Present Acts of Excise to Pay the duty of 8 d. per Gallon, imposed on *Strong-water* perfectly made.

1. That it is in the letter of the Act, appears,
1. From its name, It is called in all Foreign Parts *Aquavita*, and here Brandy, which is in *Holland* the general name for all sorts of *Strong-water*.
2. From its quality, It hath been proved to be the best and most wholesome sort of *Strong-water*.
3. From its use, It is perfectly fitted for Consumption; And ten times as much drank and consumed, as of all other *Strong-water*.

2. That it is within the meaning of the Acts; And this appears,

1. From the several Rates put upon it in former times.
1. By an Ordinance in 44. wherein it is termed a Spirit; and had a lower Rate put on it, than on *Aquavita*. It is provided, That if it should be fraudulently sold to be retailed in kind instead of *Aquavita*, It should pay the rate put on *Aquavita*.

Observe hence,

1. That it was suggested that *Brandy* was not drank in kind, but used as a preparation only for *Strong-water*; And thereupon termed and rated as a Spirit.

2. That it was the use made it be rated higher or lower, For though it were called and rated as a Spirit, on supposition that it was a Spirit only, yet if it were fraudulently sold instead of *Aquavita*, it should pay as such.

Note, It is plain, That it was no otherwise a fraud to sell it instead of *Aquavita*, than as it was contrary to the allegation of its being a preparative only. For, there is no punishment or penalty on the fraud, which would have been, if it had been *Malum in se*, as the Merchants would have it.

2. In a pretended Act in 1649. these Rates are laid	1. On all Spirits imported	0 s. 4 d.
	2. On all Foreign and domestique Spirits sold instead of <i>Aquavita</i>	1 0
	3. On all <i>Strongwaters</i> perfectly made imported	1 0
3. In a pretended Ordinance in 1653. these Rates were laid	1. On all Spirits imported	0 4
	2. On all Spirits Foreign or domestique sold instead of <i>Aquavita</i>	1 0
	3. On all <i>Aquavita</i> imported	1 0

Observe,

1. That by this last Act and Ordinance, Foreign Spirits and Domestique that were sold instead of *Aquavita*, were to pay duty as *Strong-water*. And there appears no other reason in any of the former pretended Acts or Ordinances, why such Spirits were not called *Strong-waters* as well as rated such, but because they were more generally redistilled then drank of themselves in *Specie*.

Obf. 2. That in this last Ordinance, the word fraudulently is quite omitted, although it must have been as much a fraud in it self to sell Spirits in 53, instead of *Aquavita*, as it was in 44, or 49.

In the said Acts are these Rates laid	1. For every Gallon of Spirits made of any kind of Wine or Cider imported	4 d.
	2. For every Gallon of <i>Strong-water</i> perfectly made imported	8.

The duties on Foreign Liquors are to be paid by the Merchant before landing of his Goods.

Note 1. That the clause of Spirits sold instead of *Aquavita* is here omitted; whereas it was never more needful (if *Brandy* be but a Spirit) for greater quantities were never imported or drank than at the time of and since the making of these Acts.

2. The clause of *Strong-waters* perfectly made is continued, whereas never more needful, For none at all is imported, if *Brandy* be not *Strong-water*.

3. If *Brandy* be to pay a duty by the first clause only, Then there is a digression from the policy and letter of the Law in former times, which the Merchant would have to be the Rule and standard now.

4. If *Brandy* be chargeable by the first clause, then no duty is laid on Spirits made here of Wine imported, Of which great quantities are made, And which though not drinkable of themselves, are usually mixed with *Brandy*, and so disposed of paying no duty, if not while Spirits, which is also a digression from the aforesaid former Laws, whereby domestique Spirits as well as Foreign, when sold instead of *Aquavita* are charged with the same duty.

5. If the said first clause be meant of a Foreign Spirit only, How can it be proved that such are made of Wines or Sider, to which the Acts limit the duty, the same being made beyond the Seas?

6. The said first clause plainly lays a duty on a domestique manufacture, and with this variation from all precedent Acts and Ordinances, In those the word Imported immediately follows Spirits, In these Wine and Sider, the materials of which the Spirits are to be made.

7. The duty on *Strong-water* is to be paid by these Acts by the Merchant before landing, But by all former it was to be paid by the first buyer The Merchant hath for 20. Years paid for *Brandy* at the *Customs-House*

as for *Aquavita*, what President can he produce from former times that he should pay for it as Spirits in the Excise, who did never then pay Excise, but always paid Customs for it as *Aquavita*?

8. How can that which is bought by the Merchant as *Aquavita*, and to pay the duty before landing, and is sold again by him as bought, and so afterwards used, be yet disputed to be *Aquavita*?

9. It cannot be shewn that any Power or Authority did ever Rate or account that Liquor as a Preparation or Imperfect, which in it self was so perfectly made as to be fit for Consumption.

Secondly, That the Merchants ought however to pay the said duty of 8 d. since November 1666, From which time only it is required.

First, It hath been proved by credible Witnesses, that they demanded and received it of the people.

2. From the said time (since, which only it is claimed) for a Year and an half together, the Merchants did quietly pay it.
3. From thence for about three quarters of a Year after, they gave Bond conditionally for Payment thereof, in case it should be adjudged *Strong-Water* by any Court of Judicature.

4. Since they ceased to give Bond, several Tryals have been had, and many more begun, and yet the question remaining undetermined as at this day.

1. Can it then be rationally imagined, That the Merchant would Sell that at 4 d. per. Gallon, for which he had paid 8 d? Or, that for which he had given Bond, and must at length pay 8 d. if a Recovery be had against any Merchant? Or, the other which he was liable to be sued for every day?

2. The Merchants have vast quantities come in of late, and remaining in their hands undisposed of, For which they may receive the Duty.

The Merchants have however saved half the Duty at the Customs-House; For, having there paid for *Brandy* as *Aqua-vita*, they have paid but half of what they ought to have paid, in case it be Spirits and not *Aqua-vita*.

Thirdly, As to what was alledged, That eight Verdicts had been given against the Farmers on full Evidence in the Exchequer.

1. It is most Untrue; For never but one was given on a Defence made, And that was an especial Verdict in the Case of Mr. Papillon, and which is yet depending undetermined in the Exchequer Chamber, and which had been determined last Term, had not Mr. Papillon by his Council moved to put it off.
2. There was a Tryal had before the Lord Chief Baron in London, an especial Jury, Wherein the Farmers were Defendants, which took up five hours Hearing; But a Verdict could not be brought in, by reason thirteen Persons were Sworn of the Jury, twelve whereof however were unanimously agreed to have found, That *Brandy* was *Strong-water* perfectly made.
3. That the Lord Chief Baron did afterwards declare in open Court, That he had heard so much of the Cause, that he would not willingly hear it again without some of his Brethren; And that it was another thing than when he heard it first; and fitter to be determined by the Parliament, than Common Law.

Fourthly, As to what Mr. Offley affirmed; about the Farmers Solicitor coming to him, and Instructing him in the Cause which was Tried at the Kings Bench-Barr; (And where *Brandy* was found to be *Strong-water* perfectly made,) And that the same was not a fair Verdict.

1. The said Mr. Offley being charged with it in Westminster-Hall, by Mr. Bosstocke the Farmers only Solicitor, since this Controversie, did in the presence of a Member of the House, confess he was never with him, nor could he tell who it was, only the Person himself told him he was their Solicitor.
2. The Merchants constant and usual Council managed the Cause, And the Witnesses which they always produce, did there give Evidence. The Tryal lasted about five hours, Inasmuch, That the Lord Chief Justice went away, and left his Brethren to hear it out: who after the Cause was over, did not stay to receive the Verdict: But the Jury staid together all night, Who being most of them Persons of quality, and coming out of the Country: It is hoped, that what the Farmers gave them, was no whit scandalous; considering the greatness of the Cause, and that it was also after a Verdict.

Fifthly, As to the Verdict alledged to be obtained against the Farmers the last Term in London, before the Lord Chief Justice of the Kings Bench.

It is true, such a Verdict was brought in, but set aside by all the Judges of the Court, as being contrary to Evidence; and a new Tryal ordered by a special Jury, which is since struck, and the said Cause to be Tried again, on a day particularly set apart for it after Easter.

But the Merchants are unwilling to remember, That in a few dayes after the said Verdict, there was another Cause brought to Tryal in London, upon an especial Jury, where they would not make Defence, but suffered a Verdict to go by default; and likewise, did forbear to bring on other Tryals, wherein themselves were Plaintiffs, and which they might (if they had thought fit) have brought to issue that Term.

And lastly, If the Merchants did imagine the Law to be in favour of their pretences, Why have they not consented to the Farmers offer, of Trying the Issue at the Bars of the Three Courts at Westminster, by Juries of any Three indifferent Counties of England?